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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Center for Biological Diversity,

Plaintiff,

v.

United States Fish and Wildlife Service;  
and Deb Haaland, in her official capacity  
as Secretary of the United States  
Department of the Interior,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Center for Biological Diversity (“Center”) brings this case challenging the U.S. Fish and Wildlife Service’s (“Service”) failure to make a mandatory finding of whether the imperiled Suckley’s cuckoo bumblebee (*Bombus suckleyi*) should be listed as threatened or endangered under the Endangered Species Act (“ESA”). 16 U.S.C. § 1533(b)(3)(B). The Service’s delay in providing lifesaving protections to Suckley’s cuckoo bumblebee increases its risk of extinction.



1 authority to issue declaratory and injunctive relief pursuant to 16 U.S.C. § 1540(g); 28  
2 U.S.C. § 2201-2202 (Declaratory Judgement Act); and 5 U.S.C. § 706 (Administrative  
3 Procedure Act, “APA”).  
4

5 6. The Center provided the Service with 60 days’ notice of its ESA violation,  
6 as required by 16 U.S.C. § 1540(g)(2)(A), by a letter to the Service dated February 9,  
7 2022 (received February 18, 2022). The Service has not remedied the ESA violation  
8 described in the notice and an actual controversy exists between the parties within the  
9 meaning of the Declaratory Judgement Act, 28 U.S.C. § 2201.  
10

11 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C)  
12 because Plaintiff resides in this district.  
13

#### 14 **PARTIES**

15 8. Plaintiff Center for Biological Diversity is a national, non-profit  
16 conservation organization that works to ensure the preservation, protection, and  
17 restoration of biodiversity, native species, ecosystems, public lands and waters, and  
18 public health through science, policy, and environmental law. The Center is incorporated  
19 in California and headquartered in Tuscon, Arizona, with offices throughout the United  
20 States. The Center has over 1.7 million members and supporters.  
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23 9. The Center and its members have deep and long-standing interests in the  
24 conservation and recovery of imperiled species such as Suckley’s cuckoo bumblebee and  
25 its habitat, and the enforcement of the ESA. The Center’s members have scientific,  
26 professional, educational, aesthetic, moral, and spiritual interests in Suckley’s cuckoo  
27 bumblebee, and seek to observe this species in its natural habitat. The Center’s interests  
28

1 are directly harmed by the Service's failure to timely respond to the Center's petition to  
2 list Suckley's cuckoo bumblebee and comply with its mandatory duty to determine  
3 whether Suckley's cuckoo bumblebee should be listed as "threatened" or "endangered"  
4 under the ESA.  
5

6 10. The Center's members include individuals who seek to observe and study  
7 Suckley's cuckoo bumblebee in its natural habitat and who regularly visit those areas.  
8 The Center's members derive scientific, professional, educational, and aesthetic benefits  
9 from observing this rare species and intend to continue to visit these areas to observe  
10 Suckley's cuckoo bumblebee in the future.  
11

12 11. For example, one Center member has professional and educational interests  
13 in Suckley's cuckoo bumblebee and has visited habitat areas for Suckley's cuckoo  
14 bumblebee while conducting surveys for several species of bumblebees. This member  
15 also has recreational and aesthetic interests in Suckley's cuckoo bumblebee and is deeply  
16 passionate about its conservation. This member is a part of organizations solely dedicated  
17 to the protection of imperiled bees, including Suckley's cuckoo bumblebee, and often  
18 hikes in areas where Suckley's cuckoo bumblebee might be observed. This member is so  
19 enthusiastic about bumblebees, that he has even named his camper van after bumblebees.  
20 This member has concrete plans to search for Suckley's cuckoo bumblebee this year.  
21 These interests are harmed by the significant threats to Suckley's cuckoo bumblebee's  
22 survival and recovery, such as the decline of host species, habitat loss and degradation,  
23 pesticide use, and climate change.  
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1 threatened species depend may be conserved . . . [and] to provide a program for the  
2 conservation of such endangered species and threatened species.” 16 U.S.C. § 1531(b).

3         16. Section 4 implements the goals of the ESA by charging the Secretary with  
4 the duty to list imperiled species as “threatened” or “endangered.” *Id.* § 1533(a). The  
5 ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct  
6 population segment of any species of vertebrate fish or wildlife which interbreeds when  
7 mature.” *Id.* at § 1532(16). A species is considered “endangered” when it “is in danger of  
8 extinction throughout all or a significant portion of its range.” *Id.* at § 1532(6). A species  
9 is considered “threatened” when it is “likely to become an endangered species within the  
10 foreseeable future throughout all or a significant portion of its range.” *Id.* at § 1532(20).

11         17. The ESA’s substantive protections only apply after the Secretary lists a  
12 species as threatened or endangered. For example, section 7 of the ESA requires all  
13 federal agencies to ensure that their actions do not “jeopardize the continued existence”  
14 of any listed species or “result in the destruction or adverse modification” of a listed  
15 species’ “critical habitat” *Id.* § 1536(a)(2). Section 9 prohibits “any person” from  
16 intentionally taking listed species or incidentally taking listed species without a lawful  
17 authorization from the Secretary. *Id.* §§ 1538(a)(1)(B) and 1539.

18         18. The ESA requires the Service to determine whether any species is  
19 endangered or threatened because of any of the following factors: “(A) the present or  
20 threatened destruction, modification, or curtailment of its habitat or range; (B)  
21 overutilization for commercial, recreational, scientific, or educational purposes; (C)  
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1 disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other  
2 natural or manmade factors affecting its continued existence.” *Id.* § 1533(a)(1).

3  
4 19. To ensure the timely protection of species that are at risk of extinction,  
5 Congress set forth a detailed process whereby citizens may petition the Secretary to list a  
6 species as endangered or threatened. The process includes mandatory, non-discretionary  
7 deadlines that the Secretary must meet so that imperiled species timely receive the ESA’s  
8 substantive protections. The three required findings, described below, are the 90-day  
9 finding, the 12-month finding, and the final listing determination. The Secretary has  
10 delegated responsibility for making these findings to the Service.  
11

12  
13 20. After receiving a listing petition, the Service must “to the maximum extent  
14 practicable, within 90-days” make an initial finding as to whether the petition “presents  
15 substantial scientific or commercial information indicating that the petitioned action may  
16 be warranted.” *Id.* § 1533(b)(3)(A). If the Service finds that the petition does not present  
17 substantial information indicating that listing may be warranted, the petition is denied,  
18 and the process ends.  
19

20  
21 21. If the Service instead determines that a petition does present substantial  
22 information indicating that listing may be warranted, then the agency must conduct a full  
23 scientific review of the species’ status. *Id.* Upon completion of this status review, the  
24 Service must issue a “12-month finding,” making one of three findings: (1) listing is “not  
25 warranted”; (2) listing is “warranted”; or (3) listing is “warranted but precluded” by other  
26 pending proposals for listing species, provided certain requirements are met. *Id.* §  
27 1533(b)(3)(B).  
28





1 the western bumblebee population declines, there are fewer hosts to raise Suckley's  
2 cuckoo bumblebee's young.

3         25. Suckley's cuckoo bumblebee and its' host face habitat loss and  
4 degradation. As a result, Suckley's cuckoo bumblebee and its host are left with fewer  
5 floral resources such as pollen and nectar that are necessary for their survival. Livestock  
6 overgrazing contributes to this decrease in floral resources and increases soil compaction,  
7 which reduces nesting opportunities for Suckley's cuckoo bumblebee and its host.  
8  
9 Furthermore, active fire suppression inhibits the growth of flower-rich meadows, thereby  
10 contributing to the loss of Suckley's cuckoo bumblebee's natural habitat.  
11

12         26. Pesticides, specifically neonicotinoid insecticides, are toxic to Suckley's  
13 cuckoo bumblebee and its host. Neonicotinoid insecticides threaten Suckley's cuckoo  
14 bumblebee's ability to reproduce and reduce the host colony's ability to care for  
15 Suckley's cuckoo bumblebee's young.  
16

17         27. Suckley's cuckoo bumblebee and its' host suffer from the impacts of  
18 climate change. Extreme temperatures threaten Suckley's cuckoo bumblebee's and its'  
19 host's ability to fly and forage. When bumblebees are exposed to temperatures above  
20 24°C / 75°F, they are unable to control their body temperature and cannot fly. Rising  
21 temperatures also cause droughts, which leads to the depletion of floral resources within  
22 Suckley's cuckoo bumblebee's range.  
23

24         28. Thus, Suckley's cuckoo bumblebee is immediately threatened by habitat  
25 loss and degradation, pesticide use, and climate change, which are compounded because  
26 Suckley's cuckoo bumblebee's host also faces these threats.  
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**Listing Petition and Response**

29. On April 23, 2020, the Center petitioned the Service to list Suckley's cuckoo bumblebee.

30. On May 11, 2021, the Service issued a positive 90-day finding that the Center's petition to list Suckley's cuckoo bumblebee presented "substantial scientific or commercial information indicating" that listing Suckley's cuckoo bumblebee "may be warranted" due the decline of host species, pesticide use, climate change, and habitat loss caused by livestock grazing and fire management. 86 Fed. Reg. 25,833, 25,835-6 (May 11, 2021).

31. Because of the positive 90-day finding, Defendants had a mandatory duty to issue their 12-month finding for Suckley's cuckoo bumblebee by April 23, 2021. Defendants have failed to do so.

32. Until Defendants issue the legally required 12-month listing determination and final listing rules, Suckley's cuckoo bumblebee will continue to face significant threats to its survival and recovery caused by Defendants' failure to comply with the ESA.

**CLAIM FOR RELIEF**

**Violation of the ESA for Failure to Issue a Timely 12-Month Listing**

**Determination for Suckley's Cuckoo Bumblebee**

33. Plaintiff re-alleges and incorporates all allegations set forth in the preceding paragraphs.



1 Respectfully submitted this 21st day of April, 2022.

2 /s/ Jonathan Evans

3 JONATHAN EVANS

4 (Pro Hac Vice)

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